



California Regional Water Quality Control Board

San Diego Region



RX

Linda Adams
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

May 20, 2008

CERTIFIED RETURN RECEIPT REQUESTED
7007 3020 0001 0040 7218

Mr. Michael Katz
Promenade Mall Development Corporation
4150 Mission Boulevard, Suite 211
San Diego, CA 92109

In reply refer to:
CAU:14-0588:jhaas
Place ID: 249321

Dear Mr. Katz:

Complaint No. R9-2008-0056 for Civil Liability Including Mandatory Minimum Penalties under California Water Code Section 13385; Violation of Order No. R9-2001-0096, NPDES No. CAG919002 Promenade at Pacific Beach, City of San Diego, San Diego County, California

Enclosed is Complaint No. R9-2008-0056, *Assessment of Civil Liability with Mandatory Minimum Penalties (MMPs) to Promenade Mall Development Corporation for discharges of extracted groundwater from the Promenade at Pacific Beach in the City of San Diego, San Diego County, California.*

The Complaint recommends that the California Regional Water Quality Control Board, San Diego Region (Regional Board), impose a civil liability of \$15,000 for violations between December 1, 2005 and December 31, 2007 of effluent limitations established by Order No. R9-2001-0096, NPDES No. CAG919002, *General Waste Discharge Requirements for Groundwater Extraction Waste Discharges from Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters Within the San Diego Region Except for San Diego Bay.*

As noted in your monitoring reports, extracted groundwater is discharged daily from your facility to the City of San Diego's municipal storm sewer. The City of San Diego has reported at any one time a portion, and only a portion, of the storm drain flow is pumped to the City's sanitary sewer. The remainder of the daily groundwater extraction flow in the storm drain is discharged to the waters of Mission Bay.

California Environmental Protection Agency

May 20, 2008

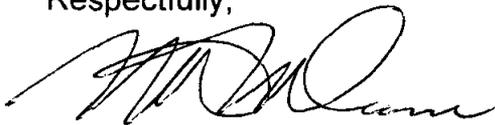
If you intend to waive your right to a hearing before the Regional Board, you must sign and return the enclosed waiver form with a \$15,000 cashier's check made out to the "State Water Resources Control Board," by 5:00 p.m. Monday **June 30, 2008**. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$15,000. In addition, you must publish the enclosed public notice in the San Diego Union-Tribune newspaper no later than **July 7, 2008**. Verification that the notice has been published must be submitted to the Regional Board no later than **July 14, 2008**.

Public Hearing

If you do not elect to waive your right to a public hearing, or verification that the newspaper notification has not been received by **July 14, 2008**, a hearing is tentatively scheduled to be held at the Regional Board meeting on **August 13, 2008**. In order for the Regional Board to fully consider any argument on your behalf, you should submit 20 copies of all documents, including exhibits, you intend to provide the Regional Board by 5:00 p.m. Friday, **July 25, 2008**. Copies of materials submitted will be forwarded to the Regional Board members. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to." In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter. If you have any questions or need further clarification, please contact Jeremy Haas directly at 858-467-2735 or jhaas@waterboards.ca.gov.

Respectfully,



MICHAEL P. McCANN
Assistant Executive Officer

MPM:ma:jh

Enclosures

1. MMP Complaint No. R9-2008-0056
2. Waiver of Public Hearing Form
3. Public Hearing Notice

cc w/ enclosures [via email only]:

Ken Greenberg, USEPA, Region 9, greenberg.ken@epa.gov

Kris McFadden, City of San Diego, kmcfadden@sandiego.gov

S. Wayne Rosenbaum, Foley Lardner LLP, SRosenbaum@foleylaw.com

California Environmental Protection Agency

ALLEGATIONS

7. Effluent Limitation Violations. Between December 1, 2005 and December 31, 2007, Promenade reported, pursuant to the Monitoring and Reporting schedule for Order No. R9-2001-0096, effluent sampling results that document violations of effluent limitations prescribed by Order No. R9-2001-0096. See Attachment 1, *Summary of Reported Effluent Violations* and Attachment 2, *Copies of Laboratory Reports*.
8. Under CWC Section 13385 subdivisions (h) and (i), certain reported effluent violations are subject to mandatory penalties as determined by the following:
 - a. On December 1, 2005 Promenade discharged effluent with a concentration of nickel at 10.2 µg/L, in violation of the chronic effluent limitation of 8.2 µg/L as specified in Discharge Specifications B1 of Order No. R9-2001-0096. This violation exceeds the effluent limitation for a Group II pollutant by greater than 20%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.
 - b. On December 1, 2005 Promenade discharged effluent with a concentration of copper at 6.2 µg/L, in violation of the maximum effluent limitation of 4.8 µg/L as specified in Discharge Specifications B1 of Order No. R9-2001-0096. This violation exceeds the effluent limitation for a Group II pollutant by greater than 20%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.
 - c. On December 1, 2005 Promenade discharged effluent with a concentration of copper at 6.2 µg/L, in violation of the chronic effluent limitation of 3.1 µg/L as specified in Discharge Specifications B1 of Order No. R9-2001-0096. This violation exceeds the effluent limitation for a Group II pollutant by greater than 20%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.
 - d. On December 13, 2006 Promenade discharged effluent with a concentration of tributyltin at 0.02 µg/L, in violation of the average monthly effluent limitation of 0.005 µg/L as specified in Discharge Specifications B1 of Order No. R9-2001-0096. This violation exceeds the effluent limitation for a Group II pollutant by greater than 20%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.
 - e. On December 13, 2006 Promenade discharged effluent with a concentration of nickel at 10.21 µg/L, in violation of the chronic effluent limitation of 8.2 µg/L as specified in Discharge Specifications B1 of Order No. R9-2001-0096. This violation exceeds the effluent limitation for a Group II pollutant by greater than 20%, and therefore is a serious violation and satisfies the requirements of a mandatory minimum penalty of \$3,000.

Attachment 1. Summary of Reported Effluent Violations

Complaint No. R9-2008-0056
Promenade at Pacific Beach
 4150 Mission Boulevard, San Diego, California

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit	Reported Value	Serious Violation ^a	Mandatory Minimum Penalty (MMP)
12/01/2005	427818	Nickel	CTR Chronic Concentration	µg/L	8.2	10.2	Yes	\$3,000
12/01/2005	427816	Copper	CTR Chronic Concentration	µg/L	3.1	6.20	Yes	\$3,000
12/01/2005	427815	Copper	CTR Maximum Concentration	µg/L	4.8	6.20	Yes	\$3,000
12/13/2006	473050	Tributyltin	Average Monthly Effluent Limitation	µg/L	0.005	0.02	Yes	\$3,000
12/13/2006	473049	Nickel	CTR Chronic Concentration	µg/L	8.2	10.21	Yes	\$3,000
TOTAL MMP PENALTY								\$15,000

^a CWC Section 13385(h)(1) requires that an MMP of \$3,000 be imposed for each serious violation. Serious violations are based on:

1. Copper, Nickel, and Tributyltin are Group II pollutants. A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more.

RF

Complaint R9-2008-0056

Attachment 2: Copies of Laboratory Reports

CRG Marine Laboratories, Inc.

2020 Del Amo Blvd., Suite 200, Torrance, CA 90501-1206 (310) 533-5190 FAX (310) 533-5003 crglabs@sbcglobal.net

CRG Project ID: 2614c

Date Sampled: 13-Dec-06 10:00
Date Received: 14-Dec-06

Client: Calscience Environmental Laboratories, Inc.

CRG ID#: 49660 Sample PB PROM
Replicate #: R2 Description: 06-12-0849
DILUTION FACTOR: '1 Matrix: Water

CONSTITUENT	FRACTION	METHOD	RESULT	UNITS	MDL	RL	DATE PROCESSED	DATE ANALYZED	BATCH ID
Aluminum (Al)	Dissolved	EPA 1640m	ND	µg/L	3	6	28-Dec-06	29-Dec-06	2614-15084
Antimony (Sb)	Dissolved	EPA 1640m	0.03	µg/L	0.01	0.015	28-Dec-06	29-Dec-06	2614-15084
Arsenic (As)	Dissolved	EPA 1640m	1.23	µg/L	0.01	0.015	28-Dec-06	29-Dec-06	2614-15084
Beryllium (Be)	Dissolved	EPA 1640m	ND	µg/L	0.005	0.01	28-Dec-06	29-Dec-06	2614-15084
Cadmium (Cd)	Dissolved	EPA 1640m	0.131	µg/L	0.005	0.01	28-Dec-06	29-Dec-06	2614-15084
Chromium (Cr)	Dissolved	EPA 1640m	0.88	µg/L	0.025	0.05	28-Dec-06	29-Dec-06	2614-15084
Cobalt (Co)	Dissolved	EPA 1640m	0.529	µg/L	0.005	0.01	28-Dec-06	29-Dec-06	2614-15084
Copper (Cu)	Dissolved	EPA 1640m	1.03	µg/L	0.01	0.02	28-Dec-06	29-Dec-06	2614-15084
Iron (Fe)	Dissolved	EPA 1640m	ND	µg/L	0.5	1	28-Dec-06	29-Dec-06	2614-15084
Lead (Pb)	Dissolved	EPA 1640m	0.007	µg/L	0.005	0.01	28-Dec-06	29-Dec-06	2614-15084
Manganese (Mn)	Dissolved	EPA 1640m	37.27	µg/L	0.01	0.02	28-Dec-06	29-Dec-06	2614-15084
Mercury (Hg)	Dissolved	EPA 245.7m	ND	µg/L	0.01	0.02	28-Dec-06	29-Dec-06	2614c-2115
Molybdenum (Mo)	Dissolved	EPA 1640m	6.962	µg/L	0.005	0.01	28-Dec-06	29-Dec-06	2614-15084
Nickel (Ni)	Dissolved	EPA 1640m	10.209	µg/L	0.005	0.01	28-Dec-06	29-Dec-06	2614-15084
Selenium (Se)	Dissolved	EPA 1640m	0.05	µg/L	0.01	0.015	28-Dec-06	29-Dec-06	2614-15084
Silver (Ag)	Dissolved	EPA 1640m	ND	µg/L	0.02	0.04	28-Dec-06	29-Dec-06	2614-15084
Thallium (Tl)	Dissolved	EPA 1640m	0.023	µg/L	0.005	0.01	28-Dec-06	29-Dec-06	2614-15084
Tin (Sn)	Dissolved	EPA 1640m	0.13	µg/L	0.005	0.01	28-Dec-06	29-Dec-06	2614-15084
Titanium (Ti)	Dissolved	EPA 1640m	0.654	µg/L	0.035	0.07	28-Dec-06	29-Dec-06	2614-15084
Vanadium (V)	Dissolved	EPA 1640m	4.85	µg/L	0.02	0.04	28-Dec-06	29-Dec-06	2614-15084
Zinc (Zn)	Dissolved	EPA 1640m	3.659	µg/L	0.005	0.01	28-Dec-06	29-Dec-06	2614-15084

MDL = Method Detection Limit (CFR 40 Part 136); RL = Reporting Limit; J = Estimated Value below the RL and above the MDL; ND = Not Detected; NA = Not Applicable; MI = Matrix Interference
California ELAP Certificate # 2261
48660 R2

CRG Marine Laboratories, Inc.

2020 Del Amo Blvd., Suite 200, Torrance, CA 90501-1206 (310) 533-5190 FAX (310) 533-5003 crglabs@sbcglobal.net

Client: Calscience Environmental Laboratories, Inc.

CRG Project ID: 25111b

CRG ID#: 33134 Sample Description: PB PROM Date Sampled: 01-Dec-05 13:40

Replicate #: R1 Matrix: Seawater Date Received: 02-Dec-05

DILUTION FACTOR: 1

CONSTITUENT	FRACTION	METHOD	RESULT	UNITS	MDL	RL	DATE PROCESSED	DATE ANALYZED	BATCH ID
Aluminum (Al)	Total	EPA 1640m	112	µg/L	0.01	0.125	12-Dec-05	14-Dec-05	25111b-13008
Antimony (Sb)	Total	EPA 1640m	0.06	µg/L	0.01	0.015	12-Dec-05	14-Dec-05	25111b-13008
Arsenic (As)	Total	EPA 1640m	1.57	µg/L	0.01	0.015	12-Dec-05	14-Dec-05	25111b-13008
Beryllium (Be)	Total	EPA 1640m	0.04	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Cadmium (Cd)	Total	EPA 1640m	0.496	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Chromium (Cr)	Total	EPA 1640m	3.55	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Cobalt (Co)	Total	EPA 1640m	5.27	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Copper (Cu)	Total	EPA 1640m	6.2	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Iron (Fe)	Total	EPA 1640m	339	µg/L	0.01	0.025	12-Dec-05	14-Dec-05	25111b-13008
Lead (Pb)	Total	EPA 1640m	1.13	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Manganese (Mn)	Total	EPA 1640m	2100	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Mercury (Hg)	Total	EPA 245.7m	0.048	µg/L	0.01	0.02	14-Dec-05	14-Dec-05	25111b-1064
Molybdenum (Mo)	Total	EPA 1640m	10.9	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Nickel (Ni)	Total	EPA 1640m	10.2	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Selenium (Se)	Total	EPA 1640m	0.062	µg/L	0.01	0.015	12-Dec-05	14-Dec-05	25111b-13008
Silver (Ag)	Total	EPA 1640m	ND	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Thallium (Tl)	Total	EPA 1640m	0.182	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Tin (Sn)	Total	EPA 1640m	0.034	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Titanium (Ti)	Total	EPA 1640m	6.06	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Vanadium (V)	Total	EPA 1640m	11.3	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008
Zinc (Zn)	Total	EPA 1640m	12.4	µg/L	0.005	0.01	12-Dec-05	14-Dec-05	25111b-13008

MDL= Method Detection Limit (CFR 40 Part 136); RL= Reporting Limit; E= Estimated Value below the RL and above the MDL; ND= Not Detected; NA= Not Applicable; MI = Matrix Interference

California ELAP Certificate # 2261
33134 RI

Attachment 2: Copies of Laboratory Reports

Complaint R9-2008-0056

RF



Linda S. Adams
Secretary for
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California Regional Water Quality Control Board San Diego Region

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WAIVER OF RIGHT TO A PUBLIC HEARING

Mr. Michael Katz
Promenade Mall Development Corporation
4150 Mission Boulevard, Suite 211
San Diego, CA 92109

Complaint No. R9-2008-0056
for
Administrative Civil Liability
With
Mandatory Minimum Penalties

\$15,000

Promenade at Pacific Beach
Place ID 249321
WDID No. 9 000000588501

By signing below, I agree to waive Promenade Mall Development Corporation's right to a public hearing before the California Regional Water Quality Control Board, San Diego Region regarding the violations alleged in the above referenced Complaint and to remit payment for the imposed civil liability. I understand that I am authorized to give up Promenade Mall Development Corporation's right to be heard and to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the proposed civil liability. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the imposed civil liability.

Signature Title Date

Print your name

Send this signed form to:
Michael P. McCann, Assistant Executive Officer
C/O Compliance Assurance
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

California Environmental Protection Agency

RF

NOTICE OF WAIVER OF PUBLIC HEARING

**California Regional Water Quality Control Board, San Diego Region
Issuance of Administrative Civil Liability (ACL) Order
With Mandatory Minimum Penalties against
Promenade Mall Development Corporation
Promenade at Pacific Beach, San Diego, California**

On May 20, 2008, the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Complaint No. R9-2008-0056 to Promenade Mall Development Corporation in the amount of \$15,000 for alleged violations of Regional Board Order No. R9-2001-0096, NPDES No. CAG919002, *General Waste Discharge Requirements for Groundwater Extraction Waste Discharges from Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters Within the San Diego Region Except for San Diego Bay*. Promenade Mall Development Corporation has elected to waive its right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$15,000 as set forth in the Complaint. The Regional Board will consider accepting the waiver at its August 13, 2008 meeting.

Written comments regarding the allegations contained in Complaint No. R9-2008-0056, and/or acceptance of the waiver, will be accepted through Friday, July 25, 2008.

The Regional Board's August 13, 2008 meeting will be at the Regional Board office located at 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 a.m. Oral comments for this item may be made during the meeting upon receipt of a request to speak slip. For more information regarding this matter please call Jeremy Haas at (858) 467-2735 or visit the Regional Board's web site at www.waterboards.ca.gov/sandiego/

Michael P. McCann
Assistant Executive Officer

COMPLETE THIS SECTION

Items 1, 2, and 3. Also complete Restricted Delivery if desired. Name and address on the reverse can return the card to you. Attach card to the back of the mailpiece, if space permits.

Delivered to:

Michael Katz
 4150 Mission Blvd., suite 211
 San Diego, CA 92109

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

7007 3020 0001 7218

February 2004

Domestic Return Receipt

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Sent To: Mr. Michael Katz
 Street, Apt. No., or PO Box No.: 4150 Mission Blvd., suite 211
 City, State, ZIP+4: San Diego, CA

PS Form 3800, August 2006

See Reverse for Instructions

RK

3/10/04